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FRA-2001-8728-27

UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

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| In the matter of: | (| |
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| PUBLIC HEARING | (| |
| | (| FRA DOCKET No: |
| re: | (| FRA-2001-8728 |
| Interim final rule on | (| |
| | (| |
| U.S. LOCATION REQUIREMENT FOR | (| |
| DISPATCHING OF RAIL OPERATIONS | (| |
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| | (| |

Department of Transportation
400 7th St., S.W.
Washington, DC

Tuesday,
February 12, 2002

Whereupon, the Public Meeting in the above
captioned matter, convened pursuant to notice.

Hearing Officer:

George Cavalla
Associate Administrator for Safety
Federal Railroad Administration

FRA panel:

John Winkle
Attorney
Office of Chief Counsel

Brenda Moscoso
Economist
Office of Safety

Doug Taylor
Staff Director
Office of Operating Practices

Dennis Yachechak
Railroad Safety Specialist
Office of Operating Practices.

FRA Participants:

Ed Pritchard
Acting Office Director
Office of Safety Assurance and Compliance

Mike Hayley (ph)
Deputy Chief Counsel

Billy Stutz (ph)
Supervisor
Office of Chief Counsel

Other Participants:

Faye Ackermans
General Manager
Safety & Regulatory Affairs
Canadian Pacific Railway

Don Watts
Director Of Regulatory Affairs
Canadian National Railways
Montreal, Quebec, Canada

Leo McCann
President
American Train Dispatchers Department
International Brotherhood of Locomotive Engineers

Bob Harvey
Brotherhood of Locomotive Engineers

Tom Thompson
Canadian National Railways

P R O C E E D I N G S

HEARING OFFICER CAVALLA: Good morning.

Welcome to the Federal Railroad Administration's hearing to receive public comments on the interim final rule on the Locational Requirement for Dispatching of U.S. Rail Operations. My name is George Cavalla. I'm the Associate Administrator for Safety, the Federal Railroad Administration, and I'll be your hearing officer for this morning.

Before we begin with the sequence of the hearing, I'd like to call on Mr. Ed Pritchard, the Acting Office Director for the Office of Safety Assurance and Compliance for the FRA to give a safety briefing.

MR. PRITCHARD: Good morning. All three doors are often and accessible. If you turn to your left and bear around the corner there's a stairwell going down that leads you into the lobby of the building and connected to the lobby at that point. Who is CPR trained? Anybody else? Nobody's either CPR representative. I've got the cell phone for 911. Is there anyone that would not like to be resuscitated?

HEARING OFFICER CAVALLA: Thank you, Ed. At

1 this time I'd like to introduce an FRA panel, from the
2 left, Mr. John Winkle who is an Attorney in the Office
3 of Chief Counsel, and he is the attorney side of this
4 rule-making. To his immediate left is Brenda Moscoso.
5 She is an economist in the FRA's Office of Safety, in
6 charge of the regulatory evaluation for this interim
7 final rule. To my right is Mr. Doug Taylor, Staff
8 Director of our FRA's Office of Operating Practices,
9 and to his right is Mr. Dennis Yachechak, a Specialist
10 in the Office of Operating Practices.

11 Some FRA members in the audience I'd like to
12 introduce. I've already introduced Mr. Ed Pritchard,
13 Mr. Mike Hayley (ph), who is the Deputy Chief Counsel,
14 and right next to him is Billy Stutz (ph) also a
15 Supervisor in the Office of Chief Counsel.

16 The order of the hearing here today is I'll
17 call on witnesses or witness panels first and take some
18 of the railroad witnesses first, and then any other
19 witnesses who will be here. Do we have a sign up sheet
20 for the witnesses?

21 MR. PRITCHARD: No, but --

22 HEARING OFFICER CAVALLA: Tell you what,
23 we'll put a sheet at the end of table. Anyone who
24 wishes to testify, if you can please sign in before we
25 actually begin to call the witnesses, so I'll know your

1 name and who you represent and then I can call you.
2 We'll have each witness on a panel testify and then
3 we'll open it up for questions from the FRA panel and I
4 will allow the audience to ask questions through the
5 chair. So if anyone has any questions regarding the
6 testimony, please direct them to me.

7 After we've gone through each witness,
8 witness panel one time, I will allow rebuttal
9 statements. I would ask that you limit your rebuttal
10 statements to no longer than five minutes, and again,
11 that would be just to correct any factual
12 misrepresentation that you believe you heard. It's
13 really not a time to restate your position.

14 The purpose of this hearing is fact finding,
15 so the position of the party on the rule is sort of
16 interest to us -- we're really concerned about any
17 facts regarding the safety implications of the rule.
18 That's what we're here to develop information on.

19 A little bit about why FRA felt it necessary
20 to issue this interim final rule. We recognize train
21 dispatching as one of the most safety-critical
22 functions in the railroad industry. Train dispatchers
23 actually steer the train. In many cases, they have
24 remote controls, switches and signals. In other cases
25 they issue movement authority. They are essentially

1 the people that tell the trains where to go and which
2 tracks to go on.

3 There's really no equivalent in other modes
4 of transportation. For example, truck dispatcher has
5 virtually no role in safety, and even air traffic
6 controllers, while they issue authority to planes to
7 occupy air corridors, these corridors are essentially
8 five miles wide and a mile high, and it's really the
9 pilots and the onboard collision avoidance systems and
10 radars that are responsible for keeping the airplanes
11 separated. So there is no real exact counterpart to
12 train dispatchers in other method of transportation
13 that we're aware of.

14 Also, with the development of technology over
15 the last decade or two, it's very possible to dispatch
16 a railride (ph) anywhere in the world. We do recognize
17 that some railroads have significant interest in
18 foreign countries, and it's conceivable, if someone has
19 a desire to dispatch a U.S. line from a country that is
20 not contiguous with the United States.

21 Somewhat recently, took a look at some of the
22 safety locations -- what happens if a railroad decides
23 that they wanted to dispatch a significant portion of
24 their operations outside the United States? What are
25 some of the safety considerations that we need to look

1 at? Well, one of the things we notice is that our
2 regulations, many of the safety regulations that we
3 have apply to dispatchers. We found that there is no
4 exact counterpart in some of the foreign countries that
5 we've taken a look at. We mentioned our ...service,
6 drug and alcohol and efficiency testing as examples.

7 Also, look at FRA's regulatory response
8 ability and authority to exercise that responsibility
9 in another country, and we have some very serious
10 concerns and questions in that area. We are
11 responsible for dispatching operations here in the
12 United States, for the US lines, and we have the use of
13 the people that are located here. The legal tools that
14 are available to us may not be available to us in other
15 countries.

16 Also, it's very difficult to maintain a
17 presence outside the United States, and so what legal
18 authority would our people have if they were acting on
19 our behalf outside of the United States?

20 These are all questions that we need to bring
21 to bear. Another question is that of what we call the
22 regulatory gap. If our regulations apply to railroads
23 that are operating here in the US or dispatched here --
24 and dispatchers are located here in the US, who
25 regulates those dispatchers in a foreign country? Can

1 we go hire foreign governments to do that? We really
2 don't know. We have no evidence that we could, let's
3 put it that way. So these are some of the things that
4 we are exploring here.

5 Again, looking at these questions, we'll be
6 quite frank, we looked at security as a potential
7 concern, but not to the extent that we look at security
8 now since the events of September 11th. That would
9 probably be true for all those in transportation -- a
10 much heightened awareness about security concerns and
11 potential security threats. So this also looms large
12 in our concern of issues that we need to explore.

13 There are other issues as well. While
14 they're not -- may not be directly impacting on safety,
15 also look at the ability of the railroad industry to
16 maintain its operations in the event of labor disputes.
17 We know that the Railway Labor Act is in many ways,
18 unique in labor relations here in the United States.
19 Because of the significant consequences of disruption
20 in railroad service, this Act gives Congress great
21 authority and the President great authority in becoming
22 involved in labor relations issues. At the same time,
23 it demands and offers some tradeoffs in terms of
24 benefits to the participants in the labor relations
25 arena.

1 One of the things that Congress can and has
2 done is they have stepped in and the President has
3 stepped in to essentially legislate the issue at
4 dispute, before they had an opportunity to
5 significantly disrupt rail transportation in the United
6 States. If a labor dispute should occur with
7 dispatchers working outside the United States, the
8 question is, what authority, if any, does the
9 government have? And without that authority, there's a
10 truly potential for a labor dispute amongst a small
11 group of railroad employees that could sit back and tie
12 up basically the entire rail network in the United
13 States. So these are questions that we need to explore
14 and are things that we're looking at.

15 Again, this is a fact finding hearing, and
16 not an adversarial hearing, and so we're trying to
17 develop information regarding all these issues and all
18 these questions.

19 At this point in time, I'd like to turn the
20 microphone over to Mr. John Winkle who is essentially
21 going to go over the rules of the meeting here today.
22 Sir?

23 MR. WINKLE: Thank you, George. Good
24 morning, everybody. This is a hearing on FRA's interim
25 final rule on locational requirements for dispatching

1 of U.S. rail operations. The hearing will be conducted
2 in accordance with the rules of procedure of the
3 Federal Railroad Administration, which are published in
4 the Code of Federal Regulations, Title 49, Part 211.

5 As George mentioned, this hearing will be
6 informal. It will not be adversarial. The rules of
7 evidence will not apply, and cross examination will not
8 be permitted.

9 In order for FRA to obtain the information
10 and expertise that you bring to this hearing, and to
11 permit each and every one of you an equal opportunity
12 to express your views and comment on the subject
13 matter, the procedures for the hearing will be as
14 follows -- and George also briefly mentioned these as
15 well.

16 Each person or organization wishing to make
17 an oral statement will be permitted to do so. At the
18 beginning of the statement, the witness should indicate
19 whether he or she is appearing as an individual or
20 representative capacity. Persons representing the same
21 organization may testify as a group.

22 When you come up, please spell your name for
23 the Court Reporter. If you are testifying as a group,
24 please identify all members of your group at the
25 beginning of your presentation.

1 If you will be referring to a document today
2 which has not yet been furnished to the FRA, please
3 submit copies to the Hearing Officer and to the Court
4 Reporter, so they can be marked for identification and
5 made a part of the public document.

6 At the conclusion of the witness statement,
7 the Hearing Officer and the panel may question the
8 witness to clarify his or her testimony. As George
9 mentioned, we will be allowing questions from the
10 audience directed through the Hearing Officer. At the
11 conclusion of all questions for a given witness, we'll
12 move on to the next witness.

13 A transcript of today's proceeding is being
14 taken. We will not go off the record unless -- in this
15 hearing unless so stated by the Hearing Officer. The
16 transcript is being prepared by a private, ...
17 reporting service under contract with the FRA. If you
18 would desire to purchase a copy, you should make your
19 own arrangements with the reporting service by speaking
20 to the Court Reporter today.

21 The original transcript of this hearing will
22 be part of the public docket, the docket number is FRA-
23 2001-8728. It is available for inspection during
24 normal business hours at FRA headquarters, Room 7051,
25 at 1120 Vermont Avenue NW.

1 In addition, the docket is also available on
2 the internet. The address is dms.dot.gov. Also,
3 copies of the docket are also available for inspection
4 and copies may be obtained for a nominal fee.

5 Thank you, and I'll now turn it back over to
6 George.

7 HEARING OFFICER CAVALLA: Thank you, John.
8 For our first witness, we'd like to call Faye
9 Ackermans, Canadian Pacific Railway. Please state your
10 name and spell it.

11 MS. ACKERMANS: My name is Faye Ackermans, F-
12 A-Y-E, A-C-K-E-R-M-A-N-S, representing Canadian Pacific
13 Railway.

14 Since 1192, I have been responsible at
15 Canadian Pacific Railway for regulatory oversight of
16 the rules and regulations affecting safe train
17 operations in both Canada and the United States. Until
18 the acquisition of the Illinois Central by Canadian
19 National, CPR was the only Class I North American
20 Railway with substantial operations in both of our
21 countries. Twenty to 25 percent of staff and track are
22 U.S. based. This has given us a somewhat unique
23 perspective of rail operating regulations promulgated
24 by both the Federal Railroad Administration and
25 Transport Canada. We have worked within both systems

1 for more than a decade. My staff in the U.S. are
2 responsible, among other things, for accident reporting
3 to FRA and ensuring drug and alcohol testing conforms
4 to 49 CFR Part 219 requirements.

5 The two regimes are very different in
6 philosophy. Each system has strengths and weaknesses.
7 The two systems have some remarkable similarities for
8 certain elements, particularly where industry standards
9 have governed to promote interchanges of traffic, for
10 example, the interchange of freight cars. But each has
11 different legislative authorities and restrictions.
12 The two regimes can never be identical. The U.S. and
13 Canada have largely equivalent systems in terms of the
14 safety of operations afforded rail employees and the
15 communities through which we operate.

16 The interim final rule on U.S. Locational
17 Requirements for dispatching of U.S. Rail Operations
18 under discussion today is clearly also linked to FRA's
19 NPRM on proposed changes to 49 CFR Part 219, which will
20 be discussed at a public hearing on February 14th. I
21 will largely confine my remarks today to the dispatcher
22 issue.

23 FRA appears to justify the need for this
24 interim rule on CPR's imminent plans to move D&H
25 dispatching to Montreal. FRA was fully aware of our

1 plans at the time, and should also be fully aware those
2 plans were stopped by inappropriate actions by the STB
3 less than 36 hours prior to the planned cutover. CPR
4 was compelled to move that particular dispatching
5 function to improve security and supervision, and in
6 1999, D&H dispatching was moved to our Network
7 Management Center in Minneapolis.

8 Since there were no longer any imminent
9 plans, CPR believes a more appropriate forum to discuss
10 these concerns would have been within the Land
11 Transportations Standards Subcommittee under NAFTA, or
12 within the Railroad Safety Advisory Committee.

13 Currently on CPR, extraterritorial
14 dispatching of U.S. track from Canada is limited to
15 seven international border locations for a total of
16 27.4 miles. Annually, we operate 10,000 trains over
17 this track for a total annual aggregate of 57,000
18 miles. Contrast this to the hundreds of airplanes each
19 day which fly through U.S. airspace under the direction
20 of Canadian Air Traffic Controllers. As far as we
21 know, the Federal Aviation Administration has no plans
22 to restrict air traffic control nor to impose U.S. drug
23 and alcohol regulations. I raise this comparison
24 because I believe it's important for the governments
25 and their agencies to treat all modes of transportation

1 equitably. Barriers set up in the name of safety that
2 really have other purposes, such as job protection,
3 have no place in safety regulations.

4 In the interim final rule, FRA raised several
5 issues and/or invited comment on several issues. I
6 want to refer to some of those issues now.

7 The Canada Labour Code controls worker hours
8 for Federally regulated employers in Canada for all but
9 the running trades employees. CLC sets a 40 hour work
10 week, with up to eight hours of paid overtime, but
11 requires that overtime hours be balanced out over a two
12 week period. Thus, Canada Labour Code hours overall
13 are more restrictive than FRA requirements for U.S.
14 dispatchers. At CPR we have an agreement with the
15 unions to restrict overtime to four hours, which means
16 the maximum time worked for a rail traffic controller
17 is 12 hours, with the vast majority of shifts being
18 eight hours. All of FRA's expressed concerns about
19 Canadian dispatcher's hours of service are unfounded.

20 The Canada Labour Code also provides
21 protection in the event of a labor disruption, similar
22 to provisions in the U.S. labor law. This should not
23 concern FRA.

24 CPR has had an extensive Proficiency Testing
25 program in place for nearly 20 years. Although

1 Transport Canada does not set our requirements in this
2 regard, they have the power to audit our policies and
3 procedures, including proficiency testing, as part of
4 newly implemented Safety Management System Regulations.

5 The Canadian Transportation Safety Board
6 requires certain railway incidents, or accident
7 precursors, to be reported. These are considered
8 cardinal rule violations and are treated as seriously
9 as train accidents at CPR. Among these are two types
10 of errors that RTCs may make -- issuance of overlapping
11 authorities and completing an authority without
12 catching a serious error in the repeat. Our written
13 submission contains two charts, one a six year trend of
14 CRV incidents attributable to Canadian RTCs, and the
15 other a statistical process control chart to track
16 trends on all CRVs using manhours as a normative
17 control. SPC charts are part of CPRs SMS and
18 therefore, are subject to Transport Canada audits. I
19 believe CPR's Canadian RTC functions meets a very high
20 standard of safety.

21 All Federally regulated railroads in Canada
22 have developed a Security Measures Plan as part of the
23 1997 Memorandum of Understanding between the Railway
24 Association of Canada and Transport Canada. After the
25 tragic events of September 11th, CPRs Security Measures

1 Plan was revised. In addition, CPR has been fully
2 involved in the Association of American Railroad's
3 efforts to insure rail security and we are committed to
4 meeting the requirements of the AAR's plan. CPR's NMCs
5 all have two layers of electronic screening and under
6 situations of heightened security, have additional
7 protection. We also have a back up NMC site in Canada
8 that can be activated as the need arises.

9 Drug and alcohol testing in Canada includes
10 pre-employment, promotion to safety critical positions,
11 returning to work after substance abuse treatment, and
12 for cause. The only aspect of FRA regulations we
13 cannot meet is the requirement for random testing
14 because of the Canadian Human Rights legislation.

15 We believe however, that newly implemented
16 comprehensive requirements for periodic medical
17 assessments coupled with a requirement for Canadian
18 physicians and other health specialists to report
19 conditions that could affect the safety of railway
20 operations for employees in safety critical positions,
21 provides an opportunity for the railways to be notified
22 about substance abuse problems in addition to the many
23 other medical conditions of concern. In addition, we
24 have a long standing Employee and Family Assistance
25 Program to help employees and their families deal with

1 substance abuse and other problems.

2 CPR has several issues to raise and requests
3 FRA to clarify these before issuing any final rule:

4 The definition of dispatch and dispatchers
5 used in this interim final rule are inconsistent with
6 the definitions used in Part 219 and 228, in effect
7 setting a more restrictive standard for foreign
8 railways. This double standard concerns us and must be
9 rectified.

10 The discussion of fringe border operations is
11 confusing at best. The purpose of cross border trains
12 is often to set-off, pick up or interchange traffic,
13 yet the language of Part 241.9(d) appears to prohibit
14 those actions. We do not know what FRA means by change
15 of method of train operations.

16 Customs and immigration is not necessarily a
17 particular point at a border. Trains may be pre-
18 cleared. In addition, as discussions continue between
19 the U.S. and Canadian governments on how to ensure
20 border security and where to conduct inspections, we
21 may very well find that trains will clear U.S. customs
22 in Canadian locations such as the Port of Montreal. In
23 such a case, how would the language in the interim
24 final rule be modified?

25 While the preamble contains language laying

1 out the intent to grandfather existing dispatching
2 locations, for future clarity, CPR would refer to see
3 the specific grandfathered locations specified in the
4 final rule.

5 With respect to Transport Canada and FRA
6 cooperation. CPR urges both FRA and Transport Canada
7 to continue discussions that commenced as part of the
8 LTSS under NAFTA. If one safety agency has concerns
9 about how a rule or regulation is being applied in the
10 other country, CPR believes that there can be net
11 benefit to the safety of all North American Railways by
12 ongoing cooperation of the two agencies. Transport
13 Canada has MOUs with certain Canadian Provinces dealing
14 with rail safety, and we suggest the two agencies might
15 consider a similar arrangement, particularly when
16 questions of regulatory compliance are raised.

17 Many small differences in rail regulatory
18 requirements exist between Canada and the U.S. There
19 are annoying to rail operators, and in my view, add
20 little value to overall system safety. I would like to
21 suggest that the opportunity exists for FRA and
22 Transport Canada to create a border zone of limited
23 distance in both Canada and the U.S., where these minor
24 differences may be ignored, so long as the railways
25 respect the regulations of the country they usually

1 operate in. There are at least two precedents for such
2 a border zone already. Two Canadian regulations, the
3 Medical Rules and Regulations for Minimum
4 Qualifications for engineers and conductors, allow U.S.
5 crews to come into Canada for limited distances,
6 respecting U.S. requirements, but not Canadian ones.
7 This means less training costs and less medical
8 assessment costs for U.S. railroads. The opportunity
9 is there to define a "limited distance", to remove
10 other regulatory impediments to cross border train
11 operations, and to allow employees to operate under the
12 regulations of their home country within that zone.

13 Conclusions. CPR believes there is no safety
14 justification to restrict the work locations of
15 dispatchers controlling trackage in Canada and the U.S.
16 If there is a safety concern, we further believe it
17 should first be dealt with by the LTSS under NAFTA, and
18 failing that, RSAC, before FRA undertakes rule making.

19 We believe the safety regimes in both
20 countries are at least equivalent to each other. They
21 can never be identical because of differences in
22 legislation.

23 CPR does not want to see artificial barriers
24 to trade falsely erected in the name of safety or job
25 protection.

1 CPR would like to see increased cooperation
2 between the safety regulators in both countries.

3 CPR would like to see the creation of a
4 border zone to eliminate certain regulatory impediments
5 to rail operations.

6 Thank you for your attention.

7 HEARING OFFICER CAVALLA: At this time we'll
8 ask the FRA panel if they have any questions of Ms.
9 Ackermans.

10 MR. WINKLE: Actually, George, I have a
11 statement. Consistent with what Ms. Ackermans says, as
12 far as the beginning of her statement about drug and
13 alcohol testing, obviously, drug and alcohol testing
14 was a ... justifications for this rule. It's the focus
15 of the Part 219 rule and that Public Hearing will be
16 this Thursday. And I just want to let everyone know
17 for the record that we will be putting the document of
18 record from that hearing and that ruling in this one as
19 well. We will be considering that as well.

20 HEARING OFFICER CAVALLA: I have a few
21 questions. Ms. Ackermans, you stated -- made
22 statements about Canadian drug and alcohol testing
23 requirements, and you mentioned you believe that you
24 felt the only difference was in Canada there's no
25 requirement for mandatory testing, is that correct?

1 MS. ACKERMANS: No, there's no requirement.
2 It's the one thing that we could never comply with,
3 because individuals have the right, under Canadian
4 legislation, to object to the testing. It's treated --
5 if you are a substance abuser, it is treated like a
6 disability and if you do decide to take your case to
7 the Human Rights Commission, it could take years --
8 five to ten years and hundreds of thousands of dollars
9 to litigate an individual case.

10 HEARING OFFICER CAVALLA: Thank you very
11 much. Are there any Canadian regulations or
12 requirements in the law stipulating mandatory post-
13 accident testing similar to what we have here in the
14 United States?

15 MS. ACKERMANS: There are not. That's
16 something that I've asked the Canadian unions if they
17 would be willing to sit down and talk about. We do
18 have ...ing, which means you've got to have a
19 reasonable suspicion on the part of the supervisor. We
20 have in the past, on occasion, but not consistently on
21 our railroads, asked individual locomotive engineers
22 and conductors to submit to testing, and for the most
23 part, they complied. But that's something I've asked
24 the Canadian union if they would be ready to enter into
25 those discussions, because it would be beneficial, I

1 think, to have very clear cut post-accident testing.

2 HEARING OFFICER CAVALLA: Thank you. You
3 mentioned the issue of security with your participating
4 with the Association of American Railroads security
5 risk assessment and ... participated in the action
6 teams. And then, has this risk assessment also
7 included dispatching centers that are located in
8 Canada, to your knowledge?

9 MS. ACKERMANS: When the AAR issued their red
10 alert, we treated our Canadian dispatching center
11 identical to that that we have in the NIA (ph) -- in
12 Minneapolis. For example, we have two entrances, we
13 shut down one and we put ... security guard on the one
14 ... covering office. We have exactly the same
15 protection.

16 HEARING OFFICER CAVALLA: My question is a
17 little different. I understand that the AAR has set up
18 critical action teams, either to examine details of
19 potential security risk to critical infrastructure, and
20 that includes, I understand, the dispatching centers.
21 ... security risk assessment has been performed on your
22 dispatching centers in Canada?

23 MS. ACKERMANS: The work we've done with AAR
24 has been principally focused on our ... operations and
25 infrastructure, but the Canadian dispatch authority has

1 been included and we have a full back up facility,
2 which many railroads don't have -- a full back up
3 facility ready to operate in the event that something
4 happens.

5 HEARING OFFICER CAVALLA: Thank you.
6 Eventually there are certain areas where Transport
7 Canada has regulations which in summary are similar to
8 those in the United States. Whereas ... final rule
9 does not just affect dispatchers who may be located in
10 Canada, virtually any other country in the world. Do
11 you have any knowledge about other countries with what
12 their regulatory schemes really have in regards to ...
13 dispatching?

14 MS. ACKERMANS: I'm quite -- reasonably
15 familiar with Britain, Australia, New Zealand. I've
16 virtually no knowledge of Mexico, which is probably the
17 next area of concern to FRA, so I'm probably not much
18 help to you on that.

19 HEARING OFFICER CAVALLA: Thank you. You
20 mentioned some of Canadian Pacific Railroad's own
21 safety programs and some of the program requirements
22 which are very similar to some of the requirements of
23 our regulations. One of the problems that we found,
24 though, is that there were cases railroads did have
25 very good programs, however, failures sometimes in

1 terms of safety concerns, is the inability to properly
2 integrate those programs and that's where we find it
3 necessary to take action and weed out regulatory
4 authority. So it's not that the railroads don't have
5 programs, it's that sometimes they actually ... and
6 then we have to become ... at our disposal.

7 Let me -- if at some point in the future, ...
8 fails to appropriately implement that sort of thing,
9 how would FRA use its ... powers?

10 MS. ACKERMANS: I would think that the most
11 reasonable solution would be a formal agreement between
12 the two regulatory authorities and that you would have
13 to request Transport Canada to take action. They have
14 different, but similar, powers under Railroad Safety
15 Act and with the implementation of the new Safety
16 Management System Regulations in year 2001, have far-
17 reaching audit capability and under that, the Minister
18 has additional powers to impose conditions to change
19 our FMA. But I would imagine that you're going to have
20 territorial problems if you try to use FRA authority in
21 Canada, and then that would have to work through the
22 government to create an arrangement -- Transport would
23 do that for you.

24 HEARING OFFICER CAVALLA: And one other point
25 I'd just like to make. You made reference to the

1 Federal Aviation Administration, and I don't profess to
2 be an authority on how FAA does its regulatory air
3 traffic control, but we did look into that issue. Our
4 understanding is that there is a multilateral treaty
5 regarding air traffic control, and it's our
6 understanding that essentially most countries control
7 their own air space, there is some hand... approaches
8 to airports. So there has been kind of look at that as
9 kind of a model, when we tried to draft our
10 regulation, our final rule with that in mind, so to
11 speak, aware of that.

12 And also we understand that it is -- air
13 traffic controllers handle through a treaty, which
14 essentially has the force of law, so that any
15 requirements can be enforced ...

16 At this point I will ask -- go ahead.

17 MR. WINKLE: First of all, concerning the
18 drug testing, it seemed that during the course of the
19 drafting of this regulation, the landscape in Canada
20 with reference to drug testing was changing, especially
21 with your ... test. I understand that that is a
22 problem, it is an issue. It may turn out to be
23 insurmountable, but do you know if there have been any
24 recent decisions in courts or otherwise that have maybe
25 loosened the restrictions on mandatory drug testing?

1 MS. ACKERMANS: I've got a number of
2 citations on my computer. I'll remember to bring them
3 to you on Thursday. Everything that we know of, in
4 fact, has gone the other way in terms of formal post-
5 testing, supporting the individual's right not to be
6 tested. ... we are awaiting word on is the testing
7 that has been going on in the trucking industry. There
8 are a whole slew of complaints that have been dealt
9 with by the Human Rights Commission, and I understand
10 that it's their intention -- towards the spring or
11 maybe towards late fall -- to actually come out with
12 their position on the trucking, airline and trucking
13 industry.

14 MR. WINKLE: Thank you. And with regard to
15 post-accident testing, it was our understanding that
16 that testing was available but there had to be, in
17 addition to an actual incident, there had to be some
18 independent evidence of drug and alcohol abuse. Is
19 that correct?

20 MS. ACKERMANS: There has to be supervisor or
21 a manager saying, you know, observed something that
22 warrants the tests. But that's something that I'd like
23 our unions to talk to us about and put that into an
24 agreement where they would allow testing for certain --
25 to adopt the post-accident testing. It makes sense to

1 me.

2 MR. WINKLE: With regard to the regulatory
3 gap that George mentioned in his opening statement, are
4 you confident that current Canadian regulations would
5 cover a dispatcher working in Canada who only
6 dispatches in the U.S. Territory?

7 MS. ACKERMANS: Yes, because I know you're
8 talking about different types of dispatching ...
9 dispatchers in your interim final rule. Anybody who's
10 employed and working in Canada would be subject to
11 Canadian laws. So whether they're only dispatching
12 across the border, the same regulations, rules and laws
13 would apply to them.

14 MR. WINKLE: Would that include any
15 contractors as well? Contract dispatchers?

16 MS. ACKERMANS: Yes.

17 MR. WINKLE: And finally, would CP have a
18 problem right now, I guess structurally, dispatching
19 from the United States? Are you set up to accommodate
20 that if we were to take such a --

21 MS. ACKERMANS: I'm not sure I understand the
22 question.

23 MR. WINKLE: Do you have the facilities
24 currently to -- and the capacity, currently, to
25 dispatch ... trains in the United States?

1 MS. ACKERMANS: In our Canadian MC?

2 MR. WINKLE: Yes.

3 MS. ACKERMANS: Not at the moment the way
4 it's physically set up. The plan is actually have
5 three dispatchers -- one in Montreal which dispatches
6 the eastern and northeastern, one in Minneapolis which
7 dispatches ... and ... which dispatches Alaska. We're
8 not physically set up -- I don't know how difficult it
9 would be. We have absolutely no plans to do that. The
10 need to move dispatchers from the DNH (ph) actually
11 comes out of the need to improve security and
12 supervision for those individuals who are kind of off
13 by themselves. So we look at it logically from where
14 is the best place to locate them, to dispatching unit
15 backing ... basis rather than ...

16 MR. WINKLE: Thank you.

17 HEARING OFFICER CAVALLA: At this time I'll
18 open the floor to the audience. If you wish to ask any
19 questions, please direct them to me. Okay, none, thank
20 you very much. Thank you very much, Ms. Ackermans.

21 Our next witness, Mr. Don Watts of the
22 Canadian National Railroad. Be sure to state your name
23 and spell it for the record.

24 MR. WATTS: My name is Don Watts, W-A-T-T-S.
25 I am Director of Regulatory Affairs for Canadian

1 National Railways, located in Montreal, Quebec, Canada.

2 On behalf of CN, I wish to provide you with
3 our comments on the interim final rule and request for
4 comments that were published in the December 11, 2001
5 Federal Register. I should mention at this time that
6 we have provided a detailed written submission as well.
7 We sent it on Thursday and if you haven't received it,
8 I do have copies here as well. That written submission
9 largely echoes the views that I'll be expressing today.

10 Canadian National is North America's fifth
11 largest railroad. It operates the largest railway
12 network in Canada, and the only transcontinental
13 network in North America. We have operations in eight
14 Canadian provinces and 14 U.S. states. In 1999, as you
15 know, we carried out an extremely successful
16 integration with the Illinois Central, and we are
17 currently implementing a similar integration with
18 Wisconsin Central Railway.

19 Safety is a core value at CN and we have long
20 been recognized as one of the safest railroads in North
21 America. Our many safety programs span our entire
22 system on both sides of the border, and is a situation,
23 I must say, which has been enhanced through the recent
24 best practices integration that we have with the IC and
25 the current WC transactions.

1 In addition, the entire Canadian railroad
2 system has a safety record that I believe is equal to,
3 if not better than that of its U.S. Counterparts. This
4 is due to a large part to a combination of company-
5 based safety programs and initiatives, and Canadian
6 federal railroad safety legislation, including some
7 aspects such as medical rules and safety management
8 systems that I'll get into a little bit later, than are
9 not covered by equivalent regulation in the U.S.

10 IT is important to note, however, that CN
11 does recognize FRA's need to ensure the safety and the
12 security of all U.S. railroad operations, including
13 those dispatched from foreign countries such as Canada.
14 We believe, however, that this can be effectively
15 accomplished without the need for prescriptive
16 regulation. We are pleased, however, to note that the
17 interim regulation recognizes that there must be
18 flexibility to account for emergency and low-risk
19 situations such as those which exist today. We
20 strongly urge that this flexibility be maintained in
21 any ultimate final rule, should FRA continue to deem
22 the regulation necessary.

23 In addition, although Cn has no plans at this
24 time to dispatch additional portions of its U.S.
25 operations from Canada, we firmly believe that we must

1 retain this flexibility for the future. As such, CN
2 feels that it is essential that any ultimate regulation
3 provide for the flexibility to dispatch additional line
4 segments from a foreign country, as long as equivalent
5 safety programs are in effect and other concerns are
6 adequately addressed.

7 As far as CN's current operations are
8 concerned -- and there's a summary on the back of the
9 oral statement-- there are four existing locations on
10 the CN system where U.S. track is dispatched from
11 Canada. We have a 1.8 mile section from Windsor,
12 Ontario to Detroit, Michigan, dispatched from Toronto;
13 a 3.1 mile section from Sarnia, Ontario to Tappan,
14 which is Port Huron, Michigan, which is also dispatched
15 from Toronto; a 43.8 section of our Sprague subdivision
16 that actually cuts across northeastern Minnesota and is
17 dispatched from our Edmonton dispatching center; and a
18 very small section of 0.3 miles from Fort Erie, Ontario
19 to Harbor Draw, which is near Buffalo New York and is
20 dispatched from our Toronto Center.

21 And I should mention that this last section,
22 the 0.3 mile section, was not referenced in the notice,
23 but has been dispatched by CN from Canada for many
24 years with no safety problems. As such, we would
25 expect that this also be included in the rule's

1 grandfather clause.

2 CN also has three locations where the
3 Canadian railroad operates into the U.S. for a very
4 short distance without the use of a dispatcher under
5 CROR Rule 105. These are 0.3 miles from Harbor Draw to
6 Black Rock, which is near Buffalo; 0.34 miles from the
7 border to Niagara Falls, New York; and 1.2 miles from
8 the border to Rouses Point. And this last section
9 again was not mentioned in the notice.

10 We note that, in describing the need for
11 regulation, FRA lists some eight areas where it has
12 concerns over the safety of foreign-based dispatching
13 operations. And these are also discussed at the start
14 of the session today by Mr. Cavalla. To recap, these
15 are regulatory oversight, drug and alcohol testing,
16 hours of service, efficiency testing, security,
17 language and terminology differences, units of measure,
18 and work disruptions.

19 CN believes that it has adequate program sin
20 place to address the concerns in each of these areas.
21 For instance, FRA has expressed concern that there may
22 be some situations where foreign-based dispatching
23 could fall within a regulatory vacuum whether through
24 lack of a regulatory body or lack of jurisdiction.

25 Although CN recognizes that this could

1 conceivably be the case in some countries, it is
2 certainly not the case in Canada where a combination of
3 Transport Canada and HRDC, Human Resources Development
4 Canada regulates the safety of any train dispatcher
5 located in Canada. This would include safety
6 protection under the Canada Labour Code, including the
7 requirement for Health and Safety Committee
8 representation. And I should mention at this point
9 that Transport Canada, as part of their jurisdiction,
10 regulate all dispatching functions of Canada, including
11 those that have portions in the U.S.

12 It is also very important to note that
13 included in this Canadian federal railroad legislation
14 are some items that far exceed comparable requirements
15 in the U.S. For instance, the new Railway medical
16 Rules for Safety Critical Positions, which include
17 train dispatchers, require detailed medical assessments
18 every three to five years depending on age, and are
19 supported by extensive medical standards covering a
20 wide variety of conditions including vision, hearing,
21 substance abuse, diabetes, epilepsy, cardiovascular and
22 other physical and mental disorders. These standards
23 were developed by medical experts in each respective
24 field and are tailored to the specifics of railroad
25 operation. The rules also require an employee's

1 personal physician to notify the railroad's Chief
2 Medical Officer of any condition that may impair an
3 employee's ability to perform their job safely.

4 In addition, Transport Canada's Safety
5 Management Systems regulation, which Ms. Ackermans
6 talked about to some degree, was enacted in 2001 and
7 requires all Canadian federally regulated railroads to
8 develop a comprehensive plan and associated processes
9 to address safety, including safety -- corporate safety
10 culture, responsibilities, communications, performance
11 targets and monitoring, safety auditing and risk
12 assessments. The regulation also requires that
13 railroads establish a formal risk assessment protocol
14 and conduct a risk assessment for any significant
15 change in operations. And there is no comparable
16 regulatory requirement in the U.S.

17 As such, CN believes that this fully
18 addresses FRA's concern in this area.

19 Drug and alcohol testing. One of the
20 concerns expressed by FRA is the lack of regulated drug
21 and alcohol testing for dispatchers in foreign
22 countries. CN has commented on this issue at large in
23 our written comments on the NPRM concerning the
24 proposed expansion of Part 219 and we will be making
25 oral representation at the public hearing on this issue

1 on Thursday.

2 As indicated in those submissions, although
3 drug and alcohol testing is not regulated in Canada, CN
4 has conducted pre-employment drug testing for employees
5 entering into safety sensitive positions, including
6 train dispatchers, since the mid 1980s. In addition,
7 in 1997, CN implemented a comprehensive drug and
8 alcohol policy and program for its Canadian operations
9 that includes testing for pre-employment for specified
10 risk-sensitive positions including train dispatchers;
11 pre-assignment to a risk sensitive position; reasonable
12 cause; and return to service follow up, in other words,
13 post treatment.

14 And I should mention, revisions planned for
15 the year 2002 will add mandatory post-accident testing
16 using criteria identical to that of the FRA.

17 Now it should be noted, however, that similar
18 to what Faye Ackermans just mentioned, CN's policy for
19 Canadian operations does not include random testing.
20 This is due to the Canadian legal climate and
21 specifically the Canadian Human Rights Act, which has
22 ruled in the past that company-imposed random drug
23 testing is prohibited, even for safety-sensitive
24 positions. Although this may have been modified by a
25 recent Court of Appeals decision, it has not been

1 tested in the railway context and there remains
2 considerable questions regarding the legal status of
3 random testing in Canada.

4 I want to emphasize, at this time, that CN is
5 a strong supporter of random testing on both sides of
6 the border and has long argued for Canadian drug and
7 alcohol legislation that would include random testing
8 for safety critical positions. We continue to urge FRA
9 to work with Transport Canada to develop common drug
10 and alcohol legislation that would help further the
11 safety of operations on both sides of the border, while
12 reducing the problems that CN would inevitably face in
13 the way of potential cost and challenges associated
14 with unilateral FRA legislation affecting Canadian-
15 based employees.

16 And it's also very important to note in this
17 area that, as I previously mentioned, Canada's new
18 Railway Medical Rules do provide for full medical
19 assessments for train dispatchers every three to five
20 years, which include substance abuse related aspects.
21 The Canadian Railway Safety Act also requires any
22 physician examining or treating a person in a railroad
23 safety critical position, such as train dispatcher, to
24 report any medical concerns they may have to the
25 railway's chief medical officer.

1 Hours of service. FRA is concerned that
2 foreign countries may not have legislated requirements
3 for hours of service regarding train dispatchers.
4 Although it is correct that Canadian-based train
5 dispatchers are not specifically covered by Transport
6 Canada hours of service rules, it must be noted that CN
7 has, through a combination of Canada Labour Code
8 regulation, collective agreements, and company policy,
9 established specific requirements for maximum hours of
10 service for its train dispatchers. This requires that
11 train dispatchers work no more than eight hours on a
12 normal assignment with the ability to work up to 12
13 hours where required to fill in for vacations, et
14 cetera. And from what I've just heard, this is a
15 similar agreement to that which CP has worked out for
16 their dispatchers. The 12 hour maximum that we have is
17 consistent with FRA and Transport Canada hours of
18 service requirements for train crews, and as such, is
19 deemed to be a safe practice. As such, though not
20 regulated by federal law, CN believes that it has
21 sufficient standards in place to sufficiently address
22 this issue.

23 Efficiency testing. FRA is concerned that
24 foreign-based train dispatchers may not be covered by
25 the same efficiency testing requirements as those in

1 the U.S. Although Transport Canada does not have
2 federal regulations governing efficiency testing, CN
3 has established an extensive efficiency test program
4 for many of its Canadian-based employees including
5 train dispatchers. This program, which is known at CN
6 as the Performance Monitoring and Rule Compliance, or
7 PMRC, is virtually identical to the U.S. requirements
8 that we have under U.S. regulations, and which we use
9 for our U.S. based dispatching officers. In fact, this
10 is another area where I must say our recent integration
11 with WC and the best practices reviews that went on
12 were quite valuable to our Canadian operations. As
13 such, CN believes that it fully addresses this concern
14 as well.

15 Security issues. FRA raises concerns over
16 security measures at foreign dispatching centers. They
17 state, "FRA does not know at this time, whether foreign
18 railroads employ security measures that are comparable
19 to those of United States railroads or whether foreign
20 governments have enforceable security requirements that
21 would effectively protect dispatch facilities."

22 CN wishes to advise that the security
23 measures for its Canadian operations, including the
24 dispatching centers, are fully compatible to those of
25 its U.S. operations. CN is every bit as concerned

1 about safety and security as is the FRA and the entire
2 North American rail industry for that matter. We have
3 worked with AAR and FRA on many task forces to review
4 security issues in light of September 11, 2001, and
5 have taken measures to increase security on both sides
6 of the border. CN dispatching offices in Canada and
7 the U.S. both make use of card readers and monitored
8 security cameras to help ensure security. Dedicated
9 security personnel have also been assigned to the
10 centers during periods of heightened awareness.

11 Now it should also be noted that CN has a
12 dedicated police department in place in both Canada and
13 the U.S., which play a major role in ensuring the
14 security of its operations and installations. We're an
15 active member of the North American Association of
16 Railroad Chiefs of Police and have established close
17 contacts with the intelligence unit of the Canadian
18 RCMP and other external police organizations to ensure
19 the sharing of information pertaining to security
20 issues.

21 CN also works closely with the Security and
22 Emergency Preparedness section of Transport Canada and
23 is part of the Memorandum of Understanding between this
24 group and the Railway Association of Canada, which
25 requires Canadian railroads to have security plans and

1 to perform regular security exercises. As such, CN
2 believes it can fully address any concerns that FRA may
3 have in this area.

4 Language differences and terminology. FRA
5 raises concerns over possible safety issues related to
6 the use of different languages or terminologies in
7 foreign countries. Although CN again recognizes that
8 this could be a potential situation that would need to
9 be addressed in some countries, the problem does not
10 exist in CN's dispatching of U.S. territory from
11 Canada. Although CN does conduct some operations in
12 French in the Province of Quebec, any large scale
13 dispatching of track in the U.S. would be designated as
14 an entirely English operation and fully dispatched in
15 English.

16 In addition, we would note that through the
17 necessity of operating in an ever expanding cross-
18 border North America railroad environment, CN, and in
19 fact the entire Canadian railroad industry uses
20 virtually identical terminology to that of the U.S.,
21 with the very few minor differences being confined to
22 non-safety related items, and being really no more
23 common than those terminology differences between
24 individual railroads. As such, CN does not see this as
25 being a concern with respect to its operations.

1 Units of Measure. FRA raises concerns over
2 the use of the metric system in countries such as
3 Canada, particularly as it relates to safety sensitive
4 measures such as distance, speed and location.

5 Much as I've just mentioned with respect to
6 terminology, again due to the nature of the North
7 American railroad industry, CN continues to English, or
8 Imperial, units for all aspects of railroad operations
9 including speed, distance and location. As such, CN
10 does not see this as being a concern with respect to
11 its operations.

12 And finally, work disruptions. FRA raises
13 concerns over potential impact of labor related work
14 stoppages, such as strikes, in foreign countries
15 affecting the U.S. rail operations. They note in the
16 notice that U.S. based dispatchers are generally
17 subject to the Railway Labor Act, which prohibits
18 strikes over contract interpretation. And they mention
19 that the U.S. Congress also has the power to legislate
20 an end to a strike by U.S. railroad employees but
21 cannot address foreign-based dispatchers.

22 Although this is technically correct, it must
23 be noted that Canada, under the Canada Labour Code, has
24 similar strike protection in place and the Canadian
25 parliament also has the ability to enact back to work

1 legislation.

2 Furthermore, it should be noted that Canada
3 has contingency plans for any labor disruption,
4 including those involving train dispatchers, which
5 could include continued operation using supervisory
6 personnel, or the transfer of dispatching operations to
7 alternate locations. As such, CN believes it has
8 sufficient safeguards in place to address these
9 concerns.

10 Having now gone through the list of FRA
11 concerns and CN programs and practices, CN firmly
12 believes that it's Canadian-based dispatching
13 operations are every bit as safe and secure as those in
14 the U.S. Furthermore, we respectfully submit that FRA
15 should not penalize those railroads with appropriate
16 safety programs so as to address the few potential
17 situations in countries that may pose a risk.

18 I'd now like to say a few words on the
19 options that FRA had indicated they are considering, as
20 well as some specific concerns that we have with
21 regards to other aspects of the stated rule.

22 FRA suggest that there are two options in
23 place to address their concerns over foreign-based
24 dispatching. These are, number one, to bar
25 extraterritorial dispatching with minor exemptions; and

1 two, to permit extraterritorial dispatching as long as
2 such dispatchers are subject to the same safety
3 standards as for those dispatchers in the U.S. and that
4 all additional concerns are adequately addressed. FRA,
5 of course, has chosen the former of these, which is
6 reflected in the interim rule.

7 CN believes that there is, in fact, a third
8 option, that being that any specific problems
9 associated with foreign-based dispatching can best be
10 addressed with specific discussions between FRA and the
11 railroad involved, and if necessary, through emergency
12 orders, rather than through regulation that paints all
13 foreign-based situations with the same brush. FRA
14 itself acknowledges in the preamble that the existing
15 situations have not led to problems.

16 Notwithstanding this view, obviously the
17 interim rule is now in place and should FRA continue to
18 be of the opinion that it must protect itself with
19 specific regulation, CN strongly believes that any
20 final rule must continue to exempt minor, low risk
21 operations such as those in place today. To require
22 full equivalent programs for these situations would
23 result in unnecessary effort and expense on behalf of
24 the railroads involved, despite the fact that FRA has
25 acknowledged that these existing locations are low risk

1 and have not presented any problems in the many years
2 that they have been in effect.

3 As previously mentioned, we also have a
4 couple of other specific concerns over some of the
5 wording used in the interim rule.

6 First off, the definition of "dispatch". And
7 I notice that Faye Ackermans from CP also provided
8 comment on this. CN is concerned that the definition
9 of dispatch contained in the interim rule could be
10 interpreted to include much more than intended. We
11 note that in the "Section by Section Analysis" it is
12 stated that "although FRA specifically mentions
13 yardmasters under the definition of dispatcher, FRA
14 does not intend for this rule to cover yardmasters as a
15 job category. Instead, yardmasters are only covered by
16 this part when they are performing dispatching
17 functions."

18 Our concern here is that, unfortunately, the
19 published rule itself will not have this background
20 interpretation, and therefore, over time, we could end
21 up with a more literal interpretation. CN suggests
22 that the definition be modified to better convey the
23 intent of the word "dispatch".

24 Also, with respect to the criteria for
25 exemption, although CN clearly agrees that any

1 regulation must include exemptions for low risk
2 operations, we are concerned that the stated criteria
3 for exemption is very restrictive and not
4 representative of the potential risks involved.

5 In addition to grandfathering those
6 situations that were in place in December 1999, the
7 interim rule exempts low risk bridge or handoff
8 operations. The criteria as contained in the interim
9 rule is as follows:

10 For "bridge" operations, we must not exceed
11 100 miles; we must be under the control of the same
12 assigned crew over the entire trip; and train movements
13 must both originate and terminate in the foreign
14 country without pickups, set offs or interchange of
15 cars.

16 And for "handoff" situations, we must not
17 exceed 100 miles; they must be under the control of the
18 same assigned crew over the entire trip; must be under
19 the exclusive control of a single dispatching desk; and
20 they must not proceed beyond the first of any of the
21 following locations -- that being interchange point,
22 signal control points, junction of two or more rail
23 lines, established crew change point, yard or yard
24 limits locations, an inspection point for U.S. Customs
25 Immigration and Naturalization Service, Department of

1 Agriculture or other government inspect, or a location
2 of change in train control.

3 Although CN can agree with the 100 mile limit
4 and requirement to be under control of a single
5 assigned crew and single dispatching desk, the Railway
6 is concerned that the requirement for no setoffs and no
7 pickups in the case of bridge lines, for instance, and
8 the list of locations beyond which the exemption cannot
9 extent for handoff situations, is extremely restrictive
10 to the point of being unmanageable. It is also not
11 representative of the suggested risks associated with
12 foreign-based dispatching.

13 To highlight this point, it is noted that
14 even though FRA acknowledges that CN's existing
15 Canadian-based operations have not presented problems
16 and are of minimal risk, few of these would fall under
17 the restrictive criteria allowed for exemption.

18 In the case of bridge traffic, the number of
19 lines of less than 100 miles that both originate and
20 terminate in the same foreign country would immediately
21 limit the potential for use of this particular
22 exemption. To then go ahead and further restrict it to
23 exclude operations where cars may be setoff, picked up
24 or interchanged, would seem to be unnecessary,
25 particularly when the train dispatcher plays a minimal

1 role in these activities. CN's Sprague subdivision
2 operation does involve the occasional planned setoff or
3 pickup in the U.S., a situation which is closely
4 coordinated with U.S. Customs, and has not presented
5 any problems.

6 In the case of handoff operations, the vast
7 list of location types that limit the extent of
8 foreign-based dispatching, will result in the allowable
9 segments being unmanageably restricted. To not be
10 allowed beyond an inspection point, yard limit, a
11 signal control point or an interchange, really does not
12 seem to provide the necessary length of segment to
13 proceed to a reasonable handoff point and is overly
14 restrictive in comparison to the minimal risk involved
15 and the role of the train dispatcher. It is suggested
16 that a more reasonable approach would be to allow
17 handoffs to proceed to a crew change point, or perhaps
18 a change in traffic control method, not including yard
19 limits, with a limit of say, 15 miles. Better yet,
20 alternative locations could also be used if agreed to
21 and filed with the FRA.

22 Last, but not least, we'd like to say a
23 couple of words on the stated economic impact as
24 contained in the notice and the separate economic
25 analysis document.

1 The notice suggests that the economic impact
2 of the rule will be minimal, and in fact, seems to
3 suggest that the net present value of costs over 20
4 years would actually show a savings due to the
5 avoidance of severance costs.

6 CN suggests that such a statement cannot be
7 made in light of the many unknown factors associated
8 with the final rule. For instance, the preamble leaves
9 open potential scenarios such as eliminating the
10 grandfathering aspects and the exemptions for handoff
11 and bridge operations provided for in the interim rule.
12 This clearly would significantly increase the costs to
13 railroads such as CN well beyond those stated without
14 providing any perceivable benefit. Even if these
15 aspects of the interim rule are retained, CN suggests
16 that the stated costs do not accurately portray the
17 potential additional costs of adding FRA equivalent
18 programs or the loss of potential economies of scale
19 associated with the loss of flexibility in dispatching
20 operations for an international railroad such as CN.

21 The notice also states that this it is
22 reasonable to expect that several injuries and
23 fatalities will be avoided as a result of implementing
24 this interim final rule. It adds that FRA believes
25 that the safety of rail operations will be compromised

1 if this rule is not implemented. CN strongly disagrees
2 with this statement as it applies to CN's operations.

3 As previously stated, railroads such as CN
4 have placed major importance on ensuring the safety of
5 operations on both sides of the border. CN's history
6 with regards to safety in general and specifically with
7 respect to its Canadian-based dispatching operations
8 show no evidence of safety concerns. This clearly does
9 not support the interim rule's claim of increased
10 accidents and injuries.

11 In conclusion, CN wishes to impress upon the
12 FRA that we do have first class safety programs in
13 place for all of our operations, including train
14 dispatching on both sides of the border.

15 Although Canadian legislation may very well
16 differ from U.S. requirements in a number of areas, CN
17 has safety programs and practices for its Canadian-
18 based dispatchers that provide a comparable level of
19 safety to that required by FRA for U.S. operations. In
20 fact, in some areas, such as Medical Rules and Safety
21 Management Systems, Transport Canada and Cn's
22 requirements exceed those of U.S. regulations.

23 Notwithstanding this, as I mentioned before,
24 we do recognize FRA's concerns as they apply to
25 foreign-based dispatching in general and FRA's need to

1 ensure the safety of U.S. operations.

2 CN believes, however, that this can best be
3 accomplished by reviewing individual situations with
4 the specific railroads involved and developing the
5 necessary plans to address any legitimate safety
6 concerns. CN also notes that FRA still has the power
7 to issue emergency orders where such discussions cannot
8 alleviate the concerns.

9 With regards to the interim rule, CN is
10 pleased to note that FRA acknowledges the minor nature
11 of existing operations and has grandfathered these. We
12 are also pleased that the need for emergency provisions
13 is recognized.

14 Should FRA continue to be of the opinion that
15 the potential risks can only be addressed through
16 regulation, we strongly urge that any final rule retain
17 these grandfather and emergency provisions. CN also
18 urges FRA to review the criteria for handoff and bridge
19 situations and revise them to be more reflective of
20 actual operations of this nature, the role of the train
21 dispatcher, and the true risks involved.

22 Finally, CN asks FRA to ensure that any final
23 rule provide the flexibility to allow for larger scale
24 foreign-based dispatching operations where a railroad
25 can establish an equivalent level of safety and

1 security to that afforded by regulatory regimes in the
2 U.S.

3 Thank you very much for providing me with an
4 opportunity to bring forth these comments and concerns
5 at this time.

6 HEARING OFFICER CAVALLA: Thank you, Mr.
7 Watts, and I'd like to ask the FRA panel if they have
8 any questions.

9 MR. TAYLOR: Just had a couple of questions,
10 Mr. Watts. I was wondering, on page five and page six,
11 you indicated that examining physicians are required to
12 report instances of substance abuse to the railroads.
13 Is that in effect now?

14 MR. WATTS: Yes, it is. It came into effect
15 last November I guess it was, November the first, I
16 believe was the date -- part of the Railway Safety Act
17 and is covered by the Medical Rules.

18 MR. TAYLOR: Do you have any ideas as to how
19 many employees have been referred to the railway CMOs?

20 MR. WATTS: As I said, it's only been in
21 place for a couple of months. I'm not sure at this
22 point, but I could certainly find out through our chief
23 medical officer and get back to you on that.

24 MR. TAYLOR: Do the Canadian Labour Code
25 regulations that you also talked about on page six, do

1 they have a -- do they have the force of law? Or is
2 that a recommendation or a standard?

3 MR. WATTS: That's a law.

4 MR. TAYLOR: That's a law.

5 MR. WINKLE: I do have a couple questions,
6 but first I wanted to make something clear from your
7 written statement that you didn't mention in your oral
8 presentation. In CN's written comments which are
9 available in the docket, they had a question about the
10 date of termination of the interim final rule. They
11 notice that in the preamble language, the date is
12 listed differently than in the actual rule text. I
13 just wanted to clear that up. The preamble language
14 was a mistake made by the Federal Register, and the
15 language as listed in the rule text in Section
16 221.23(a) is correct. The sunset date is January 10,
17 2003 and listed in the preamble as December 11, 2002.
18 So, we will make that correction.

19 MR. WATTS: If I had a hard enough time
20 finding things to talk -- the written submission is
21 determining. That was minor enough, I had no problem
22 dropping that.

23 MR. WINKLE: Well, you caught it, we didn't.
24 I had a question -- though, first a small thing. The
25 Court of Appeals decision that you mentioned regarding

1 random drug testing, would it be possible to get that
2 citation?

3 MR. WATTS: It's a -- it has nothing to do
4 with the transportation industry, it has to do with a
5 v... the SO (ph), in other words, and a safety critical
6 position is one of their requirements -- I can get the
7 name for you -- what I'll do is get the full details as
8 to the decision and get them to you.

9 MR. WINKLE: Okay, that'd be great. Under
10 hours of service, maybe I'm not really clear, but it
11 seems that you had a little bit different take on it
12 than Ms. Ackermans did when she gave her testimony. I
13 was wondering if you could clear that up. My
14 understanding after Ms. Ackermans was finished was that
15 hours of service was governed by the Canadian Labour
16 Code for dispatchers, but it sounded like based on your
17 testimony that you use that as guidance in setting up
18 collective bargaining agreements?

19 MR. WATTS: Well, the Canada Labour Code set
20 out the absolute maximum number of hours that you can
21 allow, and the distribution of them on a two week
22 basis. Now within that, that gives me some leeway to
23 make sure we obviously comply with the Canada Labour
24 Code, and then to reflect agreement to negotiate the
25 actual hours allowing them to work.

1 MR. WINKLE: Okay, so that the record is
2 clear, what is the total number of hours -- the hours
3 of service regulations in Canada Labour Code?

4 MR. WATTS: I think Faye's probably a little
5 more familiar with that than I am, but -- I know you
6 had a copy with your submission. I know -- I don't
7 know, but I could find out for you. I do know that at
8 Canadian National, our dispatchers could work eight
9 hour shifts with the possibility, which happens in a
10 very small percentage of the shifts to go to 12 hours.

11 MR. WINKLE: Okay.

12 HEARING OFFICER CAVALLA: At this point, I
13 would like to assume privilege of the Chair and ask Ms.
14 Ackermans if she'd like to answer the question about
15 the --

16 MS. ACKERMANS: >From there or here?

17 HEARING OFFICER CAVALLA: Please step up to
18 the microphone -- question to do with the maximum --
19 both daily and two weekly hours are for employees --
20 dispatchers under the Canadian Labour Code.

21 MS. ACKERMANS: The daily -- the weekly limit
22 is 48 hours. The twice -- the biweekly -- let me get
23 that right, every two week limit is 80 hours. So you
24 have situations where you can work up to eight hours
25 overtime in one week, but you have to take off those

1 hours in the next week period to balance that. So, as
2 Don mentioned, we have a maximum of four additional
3 hours in any one shift you can add on. As soon as
4 you've done that, you've got to take four hours off the
5 next week of work.

6 HEARING OFFICER CAVALLA: Just so I'm clear,
7 under the Canadian law, the federal law, you're telling
8 me that there is a 12 hour day maximum, or would that
9 be a 16 hour day maximum?

10 MS. ACKERMANS: There's no maximum stated for
11 the day. What typically happens is an eight hour day,
12 five days a week, plus an additional four hours. So --
13 the law gives you a weekly and a biweekly limit and
14 it's up to you to manage within that.

15 HEARING OFFICER CAVALLA: But the law itself
16 does not set a daily limit?

17 MS. ACKERMANS: No, it does not.

18 HEARING OFFICER CAVALLA: Thank you very
19 much.

20 MR. WINKLE: Thank you.

21 HEARING OFFICER CAVALLA: Mr. Watts, excuse
22 me for a second, just so it's clear in my own mind,
23 there was discussion about rules that require an
24 employee's personal physician to report to the chief
25 medical officer of any condition that may impair the

1 ability to perform the job safely, including drug and
2 alcohol abuse, is that correct?

3 MR. WATTS: That's correct.

4 HEARING OFFICER CAVALLA: And you are going
5 to provide information on how many instances that has
6 occurred since the law went into effect -- you are
7 going to provide that to us for the record?

8 MR. WATTS: I will, sir.

9 HEARING OFFICER CAVALLA: Thank you very
10 much. I appreciate your detailed comments on the
11 various elements of why the FRA felt it necessary to go
12 into this rule making, and in particular you indicated
13 that the railroad does have a number of programs in
14 place which you believe meets many of FRA's concerns.
15 The question I'll ask of you is the same question I
16 asked Ms. Ackermans.

17 One of the problems that we've had in the
18 past in dealing with safety regulations is that
19 sometimes the railroad fails to properly implement a
20 program that it has in place. Do you have any thoughts
21 of how we could go about exercising our regulatory
22 reach if that should occur ...

23 MR. WATTS: Similarly to -- I think
24 ultimately it would have to be through cooperative
25 agreement with Transport Canada to allow you to -- to

1 have them administering it under the NAFTA or have
2 yourselves with the ability to come into Canada and do
3 whatever orders are necessary. We certainly have no
4 objections to FRA doing audits on any of our locations
5 anyway.

6 HEARING OFFICER CAVALLA: Getting back to
7 this issue of the medical examinations that are
8 required every three to five years, depending on the
9 age of the employees, are there any requirements in
10 there to conduct a drug and alcohol during those
11 medical examinations?

12 MR. WATTS: No, there are not.

13 HEARING OFFICER CAVALLA: Do you know if
14 these medical examinations are scheduled in advance --
15 employees are given advance notice of when they have to
16 report for the examinations?

17 MR. WATTS: Yes, they're certainly not
18 surprised -- they're scheduled in advance.

19 HEARING OFFICER CAVALLA: That's all the
20 questions I have, Mr. Watts. At this time I'll ask
21 members of the audience if they have any questions that
22 they'd like to direct to the chair. Mr. -- sir, could
23 you please state your name for the record.

24 MR. McCANN: Leo McCann.

25 HEARING OFFICER CAVALLA: Please spell it.

1 MR. McCANN: M-C-C-A-N-N, L-E-O.

2 HEARING OFFICER CAVALLA: What is your
3 question?

4 MR. McCANN: It's a point of information, a
5 point of clarification regarding the hours of service.
6 There was a comment made by the gentleman, Mr. Watts,
7 that the Transport Canada hours of service regulations
8 are similar to the FRA. The point of clarification I
9 would ask, we have a nine hour standard for train
10 dispatchers in the United States. I don't believe that
11 I heard there was that daily standard for maximum hours
12 of service in Canada. Is that true?

13 HEARING OFFICER CAVALLA: Yes, if I followed
14 the corrections of Ms. Ackermans, there is no daily
15 limit on -- at least imposed by Canadian law as we
16 understand.

17 MR. McCANN: And my point of information
18 question, are there fines imposed for violations by
19 Transport Canada for not complying with any kind of
20 regulations that they have? If a person would
21 violate --

22 HEARING OFFICER CAVALLA: On the record, the
23 question to Mr. Watts, can you --

24 MR. WATTS: Transport Canada has a number of
25 mechanisms which could be an Order, which would require

1 a railway to comply or to cease operations, escalating
2 right up to potential for fines and in fact, potential
3 for prison time.

4 HEARING OFFICER CAVALLA: Thank you. Seeing
5 no further questions from the audience, thank you very
6 much, Mr. Watts.

7 At this time I would like to call our next
8 witness, Mr. Leo McCann, American Train Dispatchers.
9 Sir, would you please state and spell your name for the
10 record, and identify anyone else who will be testifying
11 with you on the panel, as well as state and spell their
12 names.

13 MR. McCANN: Thank you, Mr. Cavalla. My name
14 is Leo McCann, L-E-O, M-C-C-A-N-N. I am the President
15 of the American Train Dispatchers Department,
16 International Brotherhood of Locomotive Engineers, and
17 my group consists of myself, to my left are General
18 Counsel, Mr. Michael Wolly, M-I-C-H-A-E-L, W-O-L-L-Y;
19 and in the audience I have representing the
20 organization, Mr. Charles Mundy, C-H-A-R-L-E-S, M-U-N-
21 D-Y. He is the Vice-President of Northeast Operations.

22 We have submitted our comments to the FRA and
23 also my statement this morning. Before I begin my
24 actual statement, I would like to applaud the FRA for
25 the rule. We are wholeheartedly in favor of it and in

1 my statement this morning, we have three minor changes
2 or additions to the rule that we would like to see take
3 place.

4 The American Train Dispatchers Department is
5 the collective bargaining representative for the train
6 dispatchers employed by many of the nation's rail
7 carriers, including Burlington Northern Santa Fe,
8 Norfolk Southern Railway, CSX Transportation,
9 Consolidated Rail, Kansas City Southern, Grand Trunk
10 Western, CP Rail-Soo Line, and AMTRAK. It is a
11 pleasure and a privilege for me to be here today to
12 summarize ATDD's position on the interim rule and to
13 convey our position and to answer any questions you may
14 have regarding our position.

15 Yesterday, ATDD filed written comments on
16 this rule. We wholeheartedly support implementation of
17 the rule and urge that, with a few minor revisions
18 which I'll get to in a little bit, it be made
19 permanent.

20 ATDD has been a major proponent of requiring
21 that the dispatching of U.S. rail operations be
22 maintained in train dispatching offices in this
23 country. We have urged the agency for several years to
24 promulgate a rule like the one it now has put in place
25 on an interim basis. We have urged that the agency

1 seriously examine the ramifications of an
2 extraterritorial transfer of train dispatching, and the
3 agency has now done so. Your conclusions and rationale
4 are not surprising to us. In fact, they are just what
5 we would have expected any serious inquiry to come up
6 with.

7 By virtue of numerous studies it has
8 undertaken over the last 30 years, the FRA has learned
9 how complex, specialized, and difficult a train
10 dispatcher's job is. Our written comments identify the
11 major reports that have been issued on train
12 dispatching and summarize the findings they set forth.
13 There can be no question that train dispatchers play a
14 unique and crucial role in ensuring the safety of
15 domestic rail operations.

16 Trains do not move without authority conveyed
17 to locomotive engineers by train dispatchers. Track
18 maintenance and repair gangs, the railway worker
19 protection, and other ... of track by outside
20 contractors are all conveyed through the authority of
21 the train dispatcher. The safe movement of rail
22 traffic in and out of terminals, across main lines,
23 over bridges and through tunnels, has been placed in
24 the hands of the cadre of experienced train dispatchers
25 employed by the nation's private rail carriers. When

1 emergencies arise, the locomotive engineers, the
2 police, fire and other emergency responders, and the
3 general public all contact the train dispatcher for
4 direction.

5 United States railroads operate over 170,000
6 miles of rail track. The heavy responsibility for
7 ensuring the smooth and safe flow of trains over those
8 tracks rests on the shoulders of a mere 3000 train
9 dispatchers employed by the nation's rail carriers.
10 Most of the trackage is dispatched 24 hours a day every
11 day of the year. The potential for calamity that
12 exists whenever the train dispatchers' responsibilities
13 are compromised is obvious.

14 Today, technology has advanced to the point
15 where train dispatchers can be located far away from
16 the territories they are controlling. This has placed
17 even greater strain on the dispatchers and the FRA.
18 While there may be fewer offices where dispatchers
19 work, the extent of territory and the amount of traffic
20 under each dispatcher's control has increased.

21 Train dispatching is highly regulated by
22 federal law. Train dispatchers are limited in the
23 number of hours they may work. They are subject to
24 random, reasonable suspicion, return to duty, follow up
25 and post-incident testing for drug and alcohol abuse.

1 They must submit to periodic operating rules and
2 efficiency testing and they are personally subject to
3 sanctions for violations of the FRA's safety standards.
4 But these rules only extend to railroad operations
5 within U.S. borders.

6 None of these laws is enforceable against
7 employees of foreign corporations working in foreign
8 countries. FRA inspectors can walk into any U.S. train
9 dispatching office in this country at any time to
10 investigate whether these laws are being complied with.
11 The agency has no such rights in Canada, Mexico or
12 elsewhere in the world.

13 There is no treaty in place that grants FRA
14 that authority. There is no international agreement or
15 compact that would allow this. So what could FRA do if
16 a foreign carrier required a train dispatcher in
17 another country to work in violation of U.S. laws? We
18 believe nothing. What would happen if an accident
19 resulted from the failure of dispatchers in another
20 country to heed FRA regulations? Again, we feel they
21 can do nothing. FRA has correctly recognized that
22 without the dispatching office and the dispatcher being
23 physically located in this country, the agency's
24 ability to accomplish its safety mission would be
25 severely compromised.

1 We do not mean to suggest that any foreign
2 country or any carrier for that matter, wants to
3 promote hazardous working conditions or unsafe
4 dispatching practices. But we do believe that the FRA
5 has acted properly by comparing the level of safety
6 regulations and protection required elsewhere with what
7 is required in the United States. The standards in
8 effect in the United States are tried and true. The
9 agency cannot adopt a wait-and-see attitude when it
10 comes to standards to be applied to rail traffic
11 control from train dispatching operations abroad.
12 Unless FRA's domestic standards can be enforced abroad,
13 the agency is correct in not permitting
14 extraterritorial dispatching operations to control the
15 movement of rail traffic in the United States.

16 Our written comments focus on the importance
17 of a train dispatcher's communication responsibilities
18 and the detrimental effect that language differences
19 can cause. Our comments also focus on the importance
20 of SACP, and how the process could not encompass
21 foreign dispatching. Also, security threats inherent
22 in foreign operations and how incompatible units of
23 measure and different labor relations laws could affect
24 smooth domestic rail traffic control.

25 We would anticipate that carriers who oppose

1 the interim rule would say that the agency's concerns
2 are overstated because, if not bound to do so, the
3 carriers would follow FRA's regulations and guidelines
4 anyway. That might be true, but there is no way that
5 such an assurance could be enforced. Any time a
6 carrier felt that compliance with an agency standard
7 became too cumbersome, it could do what it wanted.
8 Certainly there are regulations that carriers would not
9 comply with if they didn't have to. We have seen on
10 far too many occasions in the past, that voluntary
11 assurances are hollow when it comes to rail safety.

12 While ATDD agrees wholeheartedly with the
13 agency's determination that a ban on extraterritorial
14 train dispatching is justified, we must point out three
15 deficiencies we see in the interim rule.

16 And now I'll point out those three that we'd
17 like to add to the rule. First, we believe that
18 conditions must be placed upon the grandfathering
19 provision in this rule. Before permitting those small
20 portions of U.S. tracks to continue to be dispatched
21 from abroad, the FRA should require that those foreign
22 dispatchers have at least a proven familiarity with the
23 territory in this country that they are controlling.
24 We point out in our comments that while the train
25 dispatcher is the eyes and ears of the train crew as to

1 the track conditions beyond their immediate line of
2 sight, the computerized display at the dispatcher's
3 work station does not relate information about the
4 physical aspects of a territory. A dispatcher who has
5 personally seen the territory and can visualize the
6 physical terrain ahead of a train is far better
7 prepared to respond to protect the safety of the crew.

8 We therefore have suggested that the interim
9 rule be amended to provide that those foreign carriers
10 that have dispatched track segments in the United
11 States since December of 1999 may continue to do so
12 only if -- and the emphasis added -- the dispatcher
13 assigned has been familiarized with the track segment
14 located in the United States by personally observing
15 that territory no less than semi-annually. We're
16 talking about a rule that many of you are familiar with
17 that actually -- that travel with a train crew or a
18 highway rail cart to get familiar with the territory by
19 physically and visually seeing it.

20 Our second concern, we believe that the
21 grandfathering provision should only apply to current
22 operators and that the exception should terminate when
23 ownership of the excepted segment changes, or the
24 operations of the track changes. At that time, the
25 only exception for extraterritorial dispatching would

1 be in true emergencies.

2 Lastly, ATDD believes that no waivers should
3 be allowed from the requirements of the interim rule,
4 that is Section 241.7 should be eliminated in its
5 entirety. Train dispatching is so central to the
6 safety and security of U.S. rail operations that the
7 amount of time it would take to rescind a waiver once
8 it has been granted may be much too late to be
9 effective.

10 Moreover, the waiver section is plagued by
11 loopholes. For example, what would happen when a
12 dispatching center that satisfied the conditions for
13 receiving a waiver undergoes a change that would have
14 disqualified it for a waiver in the first place? That
15 center would be located in a foreign country where FRA
16 has no right to go. Further, the rule establishes no
17 criteria of changes in track configurations, additional
18 mileage, signal system modifications or eliminations,
19 or addition of shippers like defense or hazardous
20 material manufacturers whose business is not permitted
21 under a waiver. We simply believe that the waiver
22 provision is ill-conceived and so fraught with
23 complications that interfere with the objective of the
24 rule itself that it should be eliminated.

25 Even if the FRA adheres to its belief that

1 waivers may be appropriate, we urge you not grant any
2 waiver until every concern raised and every potential
3 problem identified in the other sections of the rule is
4 solved. And should, as a minimum, require carriers who
5 receive waivers to report all changes that would have
6 affected an initial waiver decision as the changes
7 occur, so you can act quickly to respond to the changed
8 circumstances and rescind the waiver.

9 Finally, ATDD is concerned that the agency
10 has not sufficiently restricted the exception for
11 emergencies. We believe that a carrier's ability to
12 move dispatching operations to another country should
13 be limited to situations where the carrier can prove
14 that such operations could not be transferred to other
15 locations inside this country, such as to another
16 domestic carrier or to temporary stations on its own
17 property.

18 The FRA should require that carriers have
19 plans in place to deal with such emergencies so that
20 domestic alternatives are readily available to them.
21 In addition, the rule should be revised to recognize
22 that a foreign dispatching center controlling American
23 tracks could face a similar emergency, necessitating
24 the relocation of train dispatching operations. If the
25 FRA allows any foreign dispatching of U.S. rail

1 traffic, and again we do not think that it should, the
2 agency should insist that control of U.S. trackage
3 immediately be returned to the U.S. in the event of
4 such a foreign emergency.

5 Let me conclude by reminding the agency that
6 there exists no need for any carrier to dispatch rail
7 traffic on trackage in the United States from a point
8 outside of this country. Foreign carriers can
9 establish dispatching offices in this country just as
10 easily as domestic carriers have done.

11 The agency's explanations and rationale for
12 the interim rule demonstrate that it is well aware of
13 the problems that extraterritorial train dispatching
14 operations raise. ATDD concurs with these findings.
15 We believe that the modifications we have suggested
16 would enable FRA to accomplish its goals more easily
17 because those minor changes can only strengthen the
18 rule. We look forward to the day that the interim rule
19 becomes permanent.

20 Thank you very much for your time and
21 attention and giving me the opportunity to address you
22 with our concerns.

23 HEARING OFFICER CAVALLA: Thank you. I'd
24 like to ask the FRA panel if they have any questions.
25 I have a question. Mr. McCann, you indicated that you

1 believe that where we do -- where FRA would allow
2 grandfathering that the dispatchers who are
3 grandfathered be required to have essentially
4 qualification rides over the territory they will
5 dispatch, and then semi-annual route qualification
6 rides, is that correct?

7 MR. McCANN: That's correct, sir.

8 HEARING OFFICER CAVALLA: To your knowledge,
9 is there any such requirement in place right now for
10 dispatchers who are located in the United States to
11 dispatch the U.S. line?

12 MR. McCANN: The only stipulation that we had
13 under the NORAK (ph) rules was that the dispatcher
14 would familiarize himself over the territory once a
15 year. But with the breakup of Conrail that no longer
16 is in existence. So we do not have any strict criteria
17 for that right now. No, sir, we do not. And to add
18 one further comment. Only by agreement do we have any
19 such requirement.

20 HEARING OFFICER CAVALLA: There are no
21 federal regulations?

22 MR. McCANN: No federal regulations.

23 HEARING OFFICER CAVALLA: Thank you. You
24 also propose that the emergency revisions be eliminated
25 so that a railroad must prove that they don't have the

1 ability to transfer dispatching operations to some
2 other domestic site, is that correct?

3 MR. McCANN: That's correct, sir.

4 HEARING OFFICER CAVALLA: Are you proposing
5 that a railroad prove this to the FRA before it's
6 allowed to switch its dispatching operations
7 extraterritorially in emergency situations?

8 MR. McCANN: Yes, I am. And as an example,
9 the CSXT has actually talked to us about signing an
10 agreement where they would have an emergency situation
11 because of hurricane conditions in Jacksonville, to go
12 to a satellite operation in Atlanta.

13 HEARING OFFICER CAVALLA: And while generally
14 not customary to discuss waivers while we're talking
15 about an interim final rule, or proposed rule, I'd like
16 to state for the record -- and when we -- when FRA does
17 consider a waiver application, we do look at conditions
18 that would be necessary to insure the safety of the
19 particular operation under which the waiver has been
20 granted, so I just make you aware that we do look at
21 waivers very carefully, so I'm just stating that for
22 the record.

23 At this point, I'd like to open up to the
24 floor any questions regarding the testimony of Mr.
25 McMann. Yes, please state your name.

1 MS. ACKERMANS: (not at mike) Faye Ackermans.
2 I'd like to -- just at this point I wanted to talk
3 about ... waivers and U.S. extraterritorial ... The
4 third question I had was why would you want to alter
5 the grandfathering and ... railroad to justify in your
6 mind eliminating it?

7 HEARING OFFICER CAVALLA: Okay, I will direct
8 that question to Mr. McCann ... necessary to end the
9 grandfathering ...

10 MR. McCANN: Well, we were concerned about
11 the new owner plus the new owner not complying with
12 what had been established in the beginning, that the
13 operations had changed, not notifying the FRA of those
14 changes and any kind of, as I mentioned before, track
15 reconfigurations or increase in their operations or
16 once they got grandfathered and then they could maybe
17 elicit some sort of changes to the operation without
18 notifying the FRA.

19 HEARING OFFICER CAVALLA: Okay, thank you.
20 Any other questions of the audience? Alright, hearing
21 none, I see no more witnesses signed up on our list.
22 Is there anyone else who wishes to make a statement for
23 the record or testify?

24 At this point I'd like to ask those three
25 entities that did testify, if you have any follow up or

1 rebuttal statements -- quite frankly, because these
2 were so thoroughly discussed, I'm not sure there's a
3 need for it, but I will ask that anyway. Does anyone
4 wish to make a follow up rebuttal statement?

5 MS. ACKERMANS: I want to make one more
6 comment.

7 HEARING OFFICER CAVALLA: Ms. Ackermans, can
8 you come to the podium?

9 MS. ACKERMANS: There's been some discussion
10 today about what's the best arrangement to ensure
11 cross-border compliance, and I responded to questions
12 and I thought that the two agencies should get
13 together. Under NAFTA there is the opportunity for all
14 three governments to talk on those issues and although
15 carriers were not allowed in to some of those
16 discussions, we had an opportunity to input, but we
17 weren't allowed to be part of those discussions. It is
18 my observation that perhaps bilateral arrangement has
19 more chance of success when you're dealing with Canada
20 and the U.S. because our operations are so very similar
21 in so many ways.

22 So where I had talked to NAFTA, I think
23 bilateral discussions might be more fruitful if you're
24 trying to resolve border differences on the northern
25 border. And that's the only point I wanted to bring

1 forward.

2 HEARING OFFICER CAVALLA: Thank you. Any
3 questions from the FRA panel regarding Ms. Ackermans'
4 rebuttal statement? Thank you very much.

5 Anyone else wish to make a rebuttal
6 statement? Sir.

7 MR. HARVEY: Bob Harvey, Brotherhood of
8 Locomotive Engineers. Mr. Cavalla, I did not indicate
9 that I wished to speak on the witness list, however I
10 called and told that I may. In conferring with the
11 American Train Dispatchers Department, I'd like to make
12 a couple of statements if I could, if there's time to
13 do so.

14 HEARING OFFICER CAVALLA: Please take the
15 witness stand and again state and spell your name for
16 the record.

17 MR. HARVEY: Thank you. My name is Bob
18 Harvey. Harvey, H-A-R-V-E-Y. I'm with the Brotherhood
19 of Locomotive Engineers. The Brotherhood of Locomotive
20 Engineers represents both ... engineers and all Class 1
21 railroads in the United States and Canada. We are the
22 certified collective bargaining unit for locomotive
23 engineers and have existed since 1863.

24 We are supporting the comments of the
25 American Train Dispatchers Department of the BLE. We

1 do so because of the unique relationship that we have
2 with train dispatchers. We do not consider this to be
3 a job protection issue. We consider this matter, 241,
4 to be a safety issue and a governmental authority
5 jurisdiction issue.

6 To us, and our relationship with the train
7 dispatchers throughout history, we have been to a great
8 extent, their eyes, their ears and their instruments
9 which they use to move trains. Now, we have unique
10 functions in that capacity, but we are performing those
11 functions at their direction.

12 Traditionally, normally, in today's modern
13 environment, we use signals, and most sophisticated
14 systems have centralized traffic control or some form
15 thereof. In cases when we don't have signals, we have
16 track warrants -- all of this depends upon a special
17 kind of relationship, and a special kind of trust that
18 exists between train dispatchers and train crews. And
19 I want to emphasize that when everything is working
20 normally, there are virtually no problems associated
21 with that communication. It's when things go wrong
22 that that trust and that ability to understand both
23 from the train dispatcher's perspective with respect to
24 the crews involved, and the territory over which
25 they're dispatching that it's critical that they have

1 the knowledge and a working relationship with those
2 crews.

3 I felt that that was an important comment
4 that needs to be entered into the record, and to let
5 you know that rail labor supports this provision
6 wholeheartedly, or at least the Brotherhood of
7 Locomotive Engineers does.

8 We see this, and the discussions so far have
9 been primarily about the Canadian railroads -- and
10 that's a little bit confusing given the nature of the
11 proposal which is that this is a federal requirement
12 that would require that foreign railroads be -- all
13 operations be conducted in the U.S. be conducted from
14 the U.S. It's not just about the Canadian railroads
15 versus the U.S. railroads in that respect. We have a
16 lot of cultural similarities but, as pointed out
17 earlier, there are some differences, and perhaps some
18 significant differences that -- for the most part, the
19 Canadian and the U.S. rail operations are very similar.

20 The problem is, in understanding fully the
21 intention here of the FRA, is to exercise its authority
22 and its jurisdiction over all rail operations in the
23 United States, and it may not just be Canadian
24 operations that are affected.

25 So, we would like to conclude by saying that

1 all this is not just Canadian railroads, and their
2 safety culture, because that comparison is very similar
3 to ours. This is really about the FRA's oversight and
4 the ability to oversee the safety-critical functions of
5 train dispatching in the United States. We have, I
6 believe, ... believes that -- that the Federal Railroad
7 Administration has that authority.

8 As this is the principal issue here, the
9 Brotherhood of Locomotive Engineers fully supports the
10 interim final rule as written with the modifications
11 suggested by the American Train Dispatchers Department
12 of the BLE. Thank you.

13 HEARING OFFICER CAVALLA: Thank you, any
14 questions from the FRA panel at this time? Any
15 questions from the audience? Please direct them to the
16 chair.

17 MR. THOMPSON: Tom Thompson, CN rep. I'm a
18 little confused ... are you speaking on behalf of the
19 BLE panel itself?

20 HEARING OFFICER CAVALLA: Mr. Harvey, would
21 you please answer that?

22 MR. HARVEY: We have not conferred with the
23 Canadian Brotherhood of Locomotive Engineers on this
24 issue specifically, so I will say that no, we're
25 speaking on behalf of the Brotherhood of Locomotive

1 Engineers in the United States.

2 HEARING OFFICER CAVALLA: Are there any other
3 questions? Alright, thank you very much, Mr. Harvey.

4 Again, anyone else with a rebuttal statement?
5 Alright, thank you.

6 We did ask Mr. Watts to provide some
7 information for the record and since the comment period
8 is scheduled to close today, I think it's only
9 appropriate that we extend the comment period. Mr.
10 Watts, you think ten days would be a sufficient amount
11 of time to know whether or not you'll be able to
12 provide that information?

13 MR. WATTS: Yes, absolutely.

14 HEARING OFFICER CAVALLA: Alright, then so
15 I'd like to announce that we'll be extending the
16 comment period ten days to February the 21st, which I
17 believe is a Thursday.

18 At this point I'd like to thank you all for
19 your attention and your efforts here to provide
20 information for the FRA to help us make the decision
21 regarding the interim final rule, and this hearing is
22 now closed.

23 (Whereupon, the hearing in the above
24 captioned matter was adjourned.)

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This is to certify that the attached
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In the Matter of: Public Hearing

were held as herein appears and that this is the
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Dated: February 12, 2002